

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 13-2503**

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In Re: KELVIN ANDRE SPOTTS, a/k/a Shorty,  
  
Petitioner.

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On Petition for Writ of Mandamus.  
(3:98-cr-00047-1)

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Submitted: April 8, 2014

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Decided: April 10, 2014

Before GREGORY and DIAZ, Circuit Judges, and DAVIS, Senior  
Circuit Judge.

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Petition denied by unpublished per curiam opinion.

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Kelvin Andre Spotts, Petitioner Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kelvin Spotts petitions for a writ of mandamus, seeking his immediate release from incarceration based on United States v. Fisher, 711 F.3d 460 (4th Cir. 2013). We deny the petition.

Mandamus is a drastic remedy to be used only in extraordinary circumstances. Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976); United States v. Moussaoui, 333 F.3d 509, 516-17 (4th Cir. 2003). Mandamus is available only when the petitioner has a clear right to the relief sought, In re First Fed. Sav. & Loan Ass'n, 860 F.2d 135, 138 (4th Cir. 1988), and may not be used as a substitute for appeal. In re Lockheed Martin Corp., 503 F.3d 351, 353 (4th Cir. 2007).

The relief Spotts seeks is unavailable by way of mandamus. Accordingly, while we grant leave to proceed in forma pauperis, we deny the petition for a writ of mandamus. We deny the motion for appointment of counsel and dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION DENIED